

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAROLYN MAE HEBELER,
TDCJ-CID #1387415,

Plaintiff,

v.

LIEUTENANT COLLIER,

Defendant.

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CIVIL ACTION NO. H-06-3987

MEMORANDUM OPINION AND ORDER

Carolyn Mae Hebeler, an inmate of the Texas Department of Criminal Justice, brings this 42 U.S.C. § 1983 action alleging that a correctional officer, Lieutenant Collier, deprived her of personal property. This is the second time she has filed such a complaint. See Hebeler v. Collier, No. H-06-3248 (S.D. Tex. Oct. 23, 2006). Hebeler has also filed an Application to Proceed In Forma Pauperis. The pauper's application will be granted, and Hebeler's civil rights complaint will be dismissed as a duplicative and malicious action under 28 U.S.C. § 1915(e).

In the current action Hebeler complains that Lieutenant Collier confiscated and destroyed her Life Recovery Bible because it had been altered and was considered contraband. Hebeler states that the alteration was merely her handwritten address in it. She further states that the Bible was a very important item in her life and that the seizure was retaliatory, although she makes no

allegation as to why Collier would retaliate against her. Hebeler seeks early release as recompense for the alleged taking of her property.

She raised the same claims against the same defendant in No. H-06-3248. The district court dismissed the complaint in No. H-06-3248 for failure to state a claim after noting that Hebeler had failed to exhaust prison grievance procedures and that the claim essentially concerned an unauthorized taking of property, which has no basis in federal law because Texas provides an adequate post-deprivation remedy. See id., Memorandum and Order, Docket Entry No. 4 at 6. Hebeler filed the current complaint well after the prior action was dismissed but fails to address the court's holding that she should have sought relief in the state courts. Her conclusory allegation of retaliation does not alter this court's conclusion that she has filed the same baseless complaint. See Moody v. Baker, 857 F.2d 256, 258 (5th Cir. 1988).

An in forma pauperis prisoner's suit is subject to dismissal where the suit raises claims that are duplicative of a prior suit that is being pursued by the same prisoner in federal court. See Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993). Hebeler cannot file frivolous or malicious suits with impunity regarding fees and sanctions. See Patton v. Jefferson Correctional Center, 136 F.3d 458, 464 (5th Cir. 1998). This prisoner civil rights action shall be dismissed sua sponte under 28 U.S.C. § 1915(e). Wilson v. Lynaugh, 878 F.2d 846 (5th Cir. 1989).

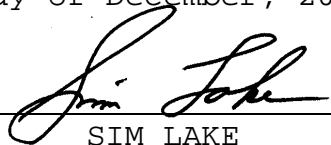
As noted above, Hebeler has previously filed a prisoner civil rights complaint that was dismissed for failure to state a claim. The current dismissal shall count as a second strike for purposes of 28 U.S.C. § 1915(g). Hebeler is admonished that once she accumulates three strikes, she may not proceed in forma pauperis in any civil action or appeal filed while she is incarcerated or detained unless she is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

Conclusion and Order

Accordingly, the court **ORDERS** as follows:

1. The Application to Proceed In Forma Pauperis (Docket Entry No. 2) is **GRANTED**.
2. The TDCJ-CID Inmate Trust Fund shall deduct 20 percent of each deposit made to Hebeler's account and forward the funds to the Clerk on a regular basis, in compliance with the provisions of 28 U.S.C. § 1915(b)(2), until the entire filing fee (\$350.00) has been paid.
3. This prisoner civil rights action, filed by Inmate Carolyn Mae Hebeler, TDCJ-CID #1387415, is **DISMISSED** as malicious. 28 U.S.C. § 1915(e)(2)(B)(i).
4. The Clerk is directed to provide a copy of this Memorandum Opinion and Order by regular mail, facsimile transmission, or e-mail to: (1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711, Fax: 512-936-2159; (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and (3) the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-strikes List.

SIGNED at Houston, Texas, this 20th day of December, 2006.



SIM LAKE
UNITED STATES DISTRICT JUDGE